

REMARKS

This application has been reviewed in light of the Office Action dated September 8, 2006. Claims 1-9 are presented for examination, of which Claims 1 and 7-9 are in independent form. New Claims 10-21 have been added to provide Applicant with a more complete scope of protection. Claims 1-9 have been amended to define Applicant's invention more clearly. Favorable reconsideration is requested.

The Office Action states that Claims 2 and 3 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In particular, the term "gateway/bid processor" was found to be "unclear [as to] whether the applicant intends ' / ' to indicate 'and', 'or' or is merely establishing synonyms."

Applicant has carefully reviewed and amended Claims 2 and 3, as deemed necessary, with special attention to the points raised on page 2 of the Office Action. In particular, the term "gateway/bid processor" has been amended to --bid processor--, which is believed to be sufficiently clear and definite, as required by the second paragraph of 35 U.S.C. § 112.¹ Accordingly, withdrawal of the indefiniteness rejections is respectfully requested.

The Office Action states that Claims 1-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the background portion on pages 1-9 of the specification ("the background portion") in view of pages 1-8, 10, 16-17, 28, 35, and 38 of the book "How to Get Started in Electronic Day Trading" ("Nassar") and U.S. Patent No. 4,674,044 ("Kalmus et al."). Applicant respectfully traverses the rejections and submits that independent Claims 1 and 7-9, together with the claims dependent therefrom, are patentably distinct from the cited prior art for at least the following reasons.

¹ Applicant notes, however, that the bid processor of Claims 2 and 3, and of new Claim 19, may function as a gateway, as persons skilled in the art would understand based on the disclosure of the present application.

An aspect of the present invention, set forth in Claim 1, is directed to an automated bid system through which a client obtains bids for executing a trade (e.g., an order to buy a quantity of a particular stock, an order to sell a quantity of a particular stock, etc.). The system includes a computer, an interface, and communication means. The computer is configured to host a plurality of software bidding modules respectively corresponding to a plurality of bidders. Each of the software bidding module stores at least risk information for a corresponding bidder. To solicit bids for executing a trade, the client submits trade information to the computer via the interface. The trade information corresponds to the trade and enables each of the plurality of software bidding modules to determine whether to submit a bid for the trade. The communication means enables at least one of the plurality of bidders to communicate data to a corresponding software bidding module.

One of the notable features of Claim 1 is that the trade information provided by the client to the computer cannot be communicated to the plurality of bidders through the communication means. By preventing leakage of the trade information, this feature prevents the plurality of bidders (or their co-workers or other associated personnel) from using the trade information to deduce the identity of the client or the nature of the trade (e.g., the stocks involved in the trade) or both, and thus prevents the possibility of bidder front-running in anticipation of the trade or similar undesirable trading activity prior to execution of the trade.

Another of the notable features of Claim 1 is that at least one of the plurality of software bidding modules is configured to respond automatically to the trade information, without human involvement, by communicating (or not communicating) a bid based on the risk information stored in the respective software bidding modules. This feature similarly prevents the possibility of bidder front-running in anticipation of the trade, by eliminating the human

bidder from the bidding process. That is, based on the stored risk information and the trade information provided by the client, a software bidding module may automatically make a bid for executing the trade, or may refrain from automatically making a bid, without direct involvement from a human bidder.

The Office Action alleges that the claimed invention merely automates a manual process, and contends that such automation would have been obvious to a person of ordinary skill in the art. Applicant respectfully disagrees with this characterization.

The background portion describes conventional multiple-party risk bidding schemes and their associated problems. Specifically, in the section of the background portion spanning from page 3, line 18, to page 8, line 11, an extensive discussion of the problem of front-running is presented, for both conventional manual schemes and conventional schemes involving an electronic portal (see column 7, line 9, to column 8, line 11). The system of Claim 1 provides a way to *eliminate* these problems and does not merely automate a manual process.

Nassar discusses various aspects of electronic day trading. On pages 1-2, Nassar describes an electronic trading system (“E-DAT”) that eliminates the need for brokers to perform buy and sell trades by allowing customers (e.g., day traders) to send orders directly to the markets. On pages 3-4 and 6, Nassar describes the “specialist system” of the NYSE, which assigns a single person or specialist to each stock traded on the exchange. The specialists act as brokers and dealers, and each specialist is allowed to raise or lower prices in order to maintain liquidity of his or her stock. Also, a specialist is allowed to trade on his or her own account, and must buy during descending markets and must sell during ascending markets. Clearly, the specialist system of the NYSE is subject to the integrity of the individual specialists and does not prevent the problems associated with front-running. On pages 4 and 6, Nassar describes a

“multiple market maker system” of the NASDAQ, in which market makers compete with each other to match buyers with sellers. Again, the problems associated with human involvement are present in the multiple market maker system, as recognized in Nassar on pages 7-8 (“The NASDAQ is the grapevine effect, *multiple* market makers all trying to be incognito, but actually as a whole can be studied to show the astute observer where the money is flowing. Too many know the secret, and therefore the leak will occur.” Emphasis in the original.).

On page 10 of Nassar, there is a reference to “the anonymous nature” of a system called “OptiMark.” However, no details about this system are provided. If the OptiMark system is similar to the electronic portal described on pages 7-8 of the background portion of the present application, then such a system also does not fully eliminate the problems of front-running, as discussed on pages 7-8 of the background portion. On pages 16-17 of Nassar, a “Small Order Execution System” or SOES is described, which requires market makers to buy at the bid price and sell at the ask price. Page 28 of Nassar describes a market order as an order that is executed immediately at the market price. Page 35 of Nassar describes front-running and states that brokers are prohibited from front-running their customers. This legal prohibition does not, however, physically prevent a broker/bidder from observing a trader’s trade activities and then making front-running trades based on information deduced from those observations, as so prevented by the present invention. If such legal prohibitions sufficiently prevented front-running in the first place (and they do not), the present invention would not have been necessary. Finally, page 38 of Nassar states that a message is sent when an order has been executed in part or in whole.

Kalmus et al. relates to an automated securities trading system and was cited in the Office Action for disclosing a gateway/bid processor.

Applicant submits that a combination of the background portion, Nassar, and Kalmus et al., assuming such combination would even be permissible, would fail to teach or suggest an automated risk bid system that includes “a computer configured to host a plurality of software bidding modules respectively corresponding to a plurality of bidders, wherein each software bidding module stores at least risk information for a corresponding bidder” and “an interface through which a client submits to the computer trade information to solicit bids for executing a desired trade,” wherein “the trade information provided by the client to the computer cannot be communicated to the plurality of bidders through the communication means,” and wherein “at least one of the plurality of software bidding modules is configured to respond automatically to the trade information, without human involvement, by communicating or not communicating a bid based on the risk information stored therein,” as recited in Claim 1.

The Office Action contends that “[n]oncommunication of information provided by one party to a possible transaction to a second party of said possible transaction, such as to prevent front running, is old and well known in the art of information technology. . .” The Office Action specifically points to pages 2 and 35 of Nassar in support thereof.

Applicant respectfully submits that merely being able to identify a goal does not automatically make obvious how to achieve that goal. As discussed on pages 7-8 of the background section, an electronic portal has been proposed, which allows a client to solicit bids on an anonymous basis. This portal, however, does not completely eliminate the problems of bidder front-running, as discussed in the paragraph bridging pages 7 and 8 of the background portion. Front-running brokers/bidders can use trade order information, such as portfolio characteristics or the size of the trading block, to deduce the identity of the trading party and anticipate the direction of the market, allowing them to front-run the actual trade.

Moreover, none of the cited prior art teaches or suggests a way to eliminate front-running from multiple-bidder risk bidding by eliminating human involvement from the bidding procedure. Neither page 2 nor page 35 of Nassar teaches how to eliminate human involvement from multiple-bidder risk bidding. Page 2, as discussed above, generally describes the SOES as a system that “allows customers to send orders directly to the markets, even if their brokers do not answer their phones.” Page 35 of Nassar merely explains that the E-DAT system prevents a trader from seeing bids made by other traders. The E-DAT system, however, does not prevent a broker/bidder from, for example, deducing the identity of the trading party or anticipating the market direction based on the trade order information.

Claim 1 provides a system that avoids these types of problems by eliminating human involvement and thus preventing leakage of trade information. None of the cited prior art, considered individually or in any permissible combination, even suggests the use of a computer to host a plurality of software bidding modules for a plurality of bidders. Each bidder provides risk information to a corresponding software bidding module. The communication means enables at least one of the plurality of bidders to communicate data to a corresponding software bidding module, which allows the risk information stored therein to be updated or changed to reflect changes in the bidder’s inventory position or desired risk exposure, for example. Trade information from a client seeking a trade does not get communicated to any of the plurality of bidders. Instead, each software bidding module processes the trade information according to the risk information stored therein to determine whether to communicate a bid. No human involvement is required. In this way, the system of Claim 1 provides benefits not found in the cited prior art. That is, the elimination of human involvement prevents brokers/bidders from making undesirable front-running trades based on trade order information.

Finally, in regard to the OptiMark system mentioned on page 10 of Nassar, no details are provided in Nassar as to how anonymity is achieved. Therefore, it is respectfully submitted that one of ordinary skill in the art would not find it obvious, based on this portion of Nassar, to use a computer to host a plurality of software bidding modules each of which has risk information stored therein, and to configure at least one of the plurality of software bidding modules to automatically communicate or not communicate a bid based on risk information stored therein.

Accordingly, Applicant submits that Claim 1 is patentable over the cited prior art and respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a). Independent Claims 7-9 include features similar to that discussed above, including the features of a computer hosting a plurality of a software bidding modules with risk information stored therein, with at least one of the software bidding modules being configured to respond automatically to trade information without human involvement. Therefore, those claims also are believed to be patentable for at least the same reasons. The other claims in this application depend from one or another of independent Claims 1 and 7-9 and therefore are submitted to be patentable for at least the reasons discussed above. Because each dependent claim also is deemed to define an additional aspect of the invention, individual consideration or reconsideration, as the case may be, of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

No petition to extend the time for response to the Office Action is deemed necessary for this Amendment. If, however, such a petition is required to make this Amendment

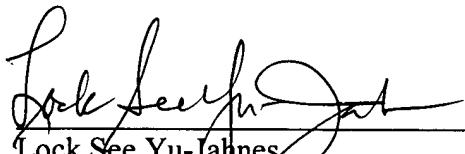
timely filed, then this paper should be considered such a petition and the Commissioner is authorized to charge the requisite petition fee to Deposit Account 06-1205.

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CONCLUSION

Applicant's undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,



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